

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

WA.No. 2602 of 2007

AGAINST THE JUDGEMENT IN WPC.24593/2007 Dated 14/08/2007
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APPELLANT/PETITIONER IN WP

KUMARAKOM LAKE RESORT PVT. LTD.,
PALLICHIRA,
KUMARAKOM NORTH, KOTTAYAM,
REP. BY ITS MANAGER (HRD),
MR. A.V.GEORGE.

BY ADV. SRI.SAJI VARGHESE
SMT.MARIAM MATHAI

RESPONDENTS/RESPONDENTS IN WP

1. THE COMMERCIAL TAX OFFICER (WC),
OFFICE OF THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES,
KOTTAYAM-686 533.
2. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES,
KOTTAYAM-686 533.
3. THE INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES,
KOTTAYAM-686 533.

BY SR.GOVERNMENT PLEADER MR.MOHAMMED RAFIQ

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 01/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.2602 of 2007

Dated, this the 1st day of November, 2007

JUDGMENT

H.L.Dattu, C.J.

Challenging the correctness or otherwise of the orders passed by the learned Single Judge in W.P.(C) No.24593 of 2007 dated 14th August, 2007, the petitioner is before us in this writ appeal.

(2) The learned Single Judge has disposed of the writ petition with a direction to the appellate authority to decide the appeal filed by the petitioner by following a decision rendered by this Court.

(3) The learned counsel appearing for the appellant would submit that while directing the appellate authority to decide the appeal on merits, the learned Single Judge ought not to have directed the appellate authority to take note of a particular decision and then proceed to consider the appeal filed by the assessee.

(4) We have carefully perused the orders passed by the learned Single Judge. The learned Judge has first noticed that the assessee being aggrieved by the orders of assessment passed under the provisions of the Kerala Tax on Luxuries Act, 1976 has filed an appeal before the first appellate authority and therefore, without entertaining the writ petition, has disposed of the same with a positive direction that the first appellate authority should consider the appeal filed by the petitioner by following a particular decision rendered by this Court. In our opinion, while directing the first appellate authority, in the normal course, what requires to be done by this Court is, to direct the first appellate authority to consider the appeal on merits and in accordance with law and not

with specific reference to a particular decision rendered by this Court. If it is done, the appellate authority will not be in a position to apply his mind to the facts and circumstances of the case and take an independent decision in the matter. In that view of the matter, by accepting the contention canvassed by the learned counsel for the appellant, the writ appeal requires to be allowed and the direction issued by the learned Single Judge requires to be modified.

(5) Accordingly the following:

Order

i) Writ appeal is allowed.

ii) Now a direction is issued to the first appellate authority to decide the appeal filed by the appellant against the order of assessment passed under the provisions of the Kerala Tax on Luxuries Act, 1976 on merits and in accordance with the law.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns/DK.